

1986

Circle Airfreight v. Boyce Equipment, a Utah corporation : Brief of Respondent

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *Circle Airfreight v. Boyce Equipment*, No. 860148.00 (Utah Supreme Court, 1986).
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UTAH COURT OF APPEALS
BRIEF

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IN THE SUPREME COURT OF THE
STATE OF UTAH

* * * * *

CIRCLE AIRFREIGHT,)
)
Plaintiff and Respondent,)
)
vs.)
)
BOYCE EQUIPMENT, a Utah corporation,)
)
Defendant and Appellant.)

860148-CA
Case No. 20851

* * * * *

BRIEF OF RESPONDENT

Appeal From Judgment of the Third Judicial
District Court for Salt Lake County
Honorable Phillip R. Fishler, District Judge

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FILED
FEB 21 1986

Clark, Supreme Court, Utah

IN THE SUPREME COURT OF THE
STATE OF UTAH

* * * * *

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|--------------------------------------|---|----------------|
| CIRCLE AIRFREIGHT, |) | |
| |) | |
| Plaintiff and Respondent, |) | |
| |) | |
| vs. |) | Case No. 20851 |
| |) | |
| BOYCE EQUIPMENT, a Utah corporation, |) | |
| |) | |
| Defendant and Appellant. |) | |

* * * * *

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PARTIES

The parties to this action, as set forth in the caption of the case on appeal, are CIRCLE AIRFREIGHT, Plaintiff and Respondent and BOYCE EQUIPMENT, Defendant and Appellant. Roger G. Segal, Esq. is attorney for Plaintiff and Respondent and David S. Cook, Esq. is attorney for Defendant and Appellant.

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STATEMENT OF THE CASE

Nature of the Case

This is an action brought by Circle Airfreight, Respondent herein, against Appellant, Boyce Equipment, to collect freight charges from Appellant for shipping services performed on Appellant's behalf on or about August 9, 1982 and August 26, 1982.

The Course of the Proceedings

The matter was tried before The Honorable Phillip R. Fishler on May 10, 1985 sitting without a jury.

Disposition in the Court Below

The trial court granted judgment in favor of Respondent and against Appellant for the freight charges for the August 9, 1982 shipment, but denied recovery of the freight charges for the Respondent on the second shipment. Appellant, Boyce Equipment, brought this appeal from the judgment for freight charges on the August 9, 1982 shipment.

STATEMENT OF THE FACTS

On or about August 9, 1982 and August 26, 1982, Respondent, Circle Airfreight, at the request of and/or for the benefit of Appellant, Boyce Equipment, undertook to deliver certain truck parts on a "collect" or "freight collect" basis, to A.H.W. Corporation and/or C.M.C. Corporation in Conakry, Africa. (TR. 86, 93, Addendum A-1 and A-2.) Respondent thereupon delivered both shipments to A.H.W. and/or C.M.C. without collecting the freight charges.

Thereafter, Respondent made demand upon Appellant, Boyce Equipment, for the outstanding freight charges for both shipments. Appellant refused to pay the same, asserting that liability for the freight laid with A.H.W. and/or C.M.C. and not with Appellant.

Appellant signed the Shipper's Letter of Instruction for both Shipments, Exhibit 7-D and 10-P (Addendum A-10 and A-11) as shipper, and claims that it marked both documents "collect" and/or directed both shipments to be made on a "freight collect" basis (TR. 86, 93, Addendum A-1 and A-2) and that it was shown and/or received copies of both documents (Appellant's Brief p. 13). However, the Shipper's Letter of Instructions for the August 9, 1982 shipment, Exhibit 10-P (Addendum A-11) is marked "prepaid". Appellant, Boyce Equipment, was additionally designated as the "shipper" or consignor on Respondent's Uniform Air Waybills, for both shipments. Exhibits 11-P and 16-P (Addendum A-12 and A-13) though these were not signed by Appellant.

Based upon these facts, Respondent brought action against Boyce Equipment to collect the outstanding charges for both shipments in the District Court.

SUMMARY OF ARGUMENT

Respondent, Circle Airfreight, contends the judgment entered by the trial court with respect to the August 9, 1982 shipment was appropriate and should be affirmed.

1. Appellant, Boyce Equipment, was, in point of fact, the seller, shipper and consignor of both the August 9, 1982 and the

August 26, 1982 shipments and signed the Shipper's Letter of Instructions for both shipments as such. Under these circumstances, the authorities cited herein, infra, clearly establish that Appellant's disclosed agency argument is clearly inappropriate. Furthermore, the testimony offered by Appellant's representative, Mark Boyce, in the District Court proceeding, together with the Shipper's Letter of Instructions for both shipments, show that the shipments were not shipped C.O.D. (TR. 86, 93, 160, Addendum A-1, A-2 and A-3).

2. It is well settled that a consignor who tenders freight to a carrier for transportation is the party primarily liable for freight charges, notwithstanding a direction that the shipment be delivered "collect" or on a "freight collect" basis, unless the consignor and the carrier contractually agree that the carrier will look to another party only for payment. It is held without exception that the direction that a shipment be delivered "collect" or "freight collect" is not contractual, its effect being merely to give the carrier an option to demand payment from the consignee, and that such a direction is therefore, insufficient to relieve the consignor of liability for the freight charges.

Moreover, the Conditions of Contract set forth on the reverse side of Respondent's Uniform Air Waybill, contains explicit wording whereby "the shipper agrees to guarantee all charges and advances" and thus assume the primary obligation for the payment of the freight. The Conditions of Contract also prohibits any alteration or modification of any provision

contained therein. These provisions clearly preclude any contractual agreement between Appellant and Respondent whereby Respondent agreed to look to another party only for payment of the freight charges.

3. Finally, Respondent herein, infra, contends that Appellant, in arguing that Respondent "is equitably estopped from claiming [Appellant] is liable to pay the freight charges" by its conduct in delivering the shipments without collecting the freight charges, overlooks the well established legal principle that a direction by the shipper that a shipment be carried "freight collect" is insufficient to relieve the shipper of its liability for freight charges. Indeed such a direction imposes no obligation on the carrier to insist upon payment of the freight before delivery. If the carrier sees fit to waive his right of lien and deliver the goods without payment of the freight, the carrier's right to resort to the shipper for compensation still remains. Moreover, the authorities are in agreement that, except for the running of the Statute of Limitations, no act or omission of the carrier can estop or preclude it from enforcing payment of the freight by a person liable therefor.

ARGUMENT

Point I

APPELLANT, BOYCE EQUIPMENT, WAS THE SELLER AND CONSIGNOR OF THE FREIGHT SERVICES WHICH ARE THE SUBJECT OF THE INSTANT PROCEEDING, AND THEREFORE WAS NOT ACTING AS AN AGENT FOR A DISCLOSED PRINCIPAL IN REQUESTING SAID SERVICES.

Appellant, Boyce Equipment, in Point I of its Brief of Appellant on file in the instant proceeding (hereafter referred

to as "Appellant's Brief"), argues that it was "an agent acting on behalf of a disclosed principal, C.M.C. Corp., and [therefore] has no liability for carrier's freight charges." See Appellant's Brief at p. 18. In support of this argument Appellant asserts the following:

CMC Corp., the concern on behalf of which Boyce requested the transportation, was not only fully disclosed to Carrier by Boyce, (Ex. 14-P), Carrier inserted the principal's name and addresses on the commercial invoice prepared by Carrier, (Ex. 23-P). By preparing that invoice, Carrier acknowledged that CMC Corp., Boyce's principal, was responsible for the freight and the cost of the parts. (Emphasis added.)

Appellant's Brief at p. 18.

Contrary to this assertion by Appellant, nothing in Appellant's parts invoice, Exhibit 14-P (Addendum A-14), or the commercial invoice prepared by Respondent, Exhibit 23-P (Addendum A-15), suggests or "discloses" that Appellant, Boyce, was an agent acting on behalf of a fully disclosed principal, C.M.C. Corp., or that Respondent acknowledged the same. Appellant, however, apparently contends that, because both documents bill C.M.C. for "costs and freight," that is, for the cost of the parts invoice as well as the freight charges, this indicates that Appellant was acting as an agent for C.M.C. Corp., a fully disclosed principal. Appellant then cites two cases, Louisville & Nashville Railroad Co. v. Central Iron & Coal Co., 265 U.S. 59, 68 L.Ed. 900 (1923), and Transport Clearings of Los Angeles v. F.J. Purdy Iron & Metals, 289 P.2d 173 (Nev. 1955) for their holding that, where the goods being shipped are not owned by the consignor and were not shipped on his account or for his benefit,

the carrier is not entitled to call upon the consignor for the freight charges, notwithstanding the fact that the consignor signed the shipping order as shipper. Appellant further asserts that "[t]he material facts in the instant case are essentially the same as those in the Louisville case." Appellant's Brief p. 20.

Contrary to Appellant's assertion, the factual circumstances found in the instant case are remarkably distinguishable from those found in Louisville & Nashville R. Co. v. Central Iron & C. Co., 265 U.S. 59, 68 L.Ed. 900, supra. In Louisville, supra, the consignor shipper, Central Iron & Coal Co. (Central Company) sold ten carloads of coal to Tutwiler & Brooks to be delivered f.o.b. at the seller's plant in Holt, Alabama. Before delivery by the seller, the purchasers, Tutwiler and Brooks, sold the coal to Great Western Smelters Corporation of Mayer, Arizona (Smelters Corporation). Thereafter "under instruction from Tutwiler and Brooks and upon their agreement to pay the freight, the Central Company delivered, at its plant, the cars of coal to the Louisville & Nashville Railroad; directed shipment thereof to Mayer over that railroad and connecting lines; and took the bills of lading, which it delivered immediately to Tutwiler & Brooks." Louisville & N.R. Co. v. Central Iron & C. Co., 265 U.S. 59, 68 L.Ed. 900, 901 (1924), supra. "That firm (Tutwiler & Brooks) made a draft for the purchase price on the Smelters Corporation with bills of lading attached. The corporation paid the draft; received the bills of lading; and, upon surrendering them to the delivering carrier and payment to it of the freight

demanded, obtained possession of the coal. The amount of the freight then demanded and paid was \$5,082.15. The freight legally payable, according to the tariff, was \$8,545.61." Louisville, 265 U.S. 59, 64, 68 L.Ed. 900, 901-902, supra. Although the shipment was made in January, 1917, the undercharge was not discovered until January, 1920, at which time Louisville & Nashville made demand upon Central Company for the full amount of the undercharge, or \$3,463.46. Louisville, 265 U.S. 59, 64, 68 L.Ed. 900, 901-902, supra. After further ascertaining that "[t]he bills of lading acknowledged receipt of the coal from the Central Company," stated that the coal was "consigned to ORDER OF Tutwiler & Brooks, Destination Mayer, Arizona," and provided that "the owner or consignee shall pay the freight and average, if any . . . and, if required, shall pay the same before delivery," Louisville, 265 U.S. 59, 64, 68 L.Ed. 900, 902, supra., the United States Supreme Court determined the following:

. . . In this case, the bills of lading acknowledge receipt of the coal from the Central Company. But it did not sign them. Nor was it described therein as the consignor. There was no clause by which the shipper agrees expressly either to pay the freight charges or to guarantee their payment. The goods were not declared to be deliverable to the Central Company's order. On the contrary, the form of the bill of lading indicated that it was neither the owner nor the person on whose behalf the shipment was being made; and that Tutwiler & Brooks were either the owners or the person in whose behalf the shipment was being made. On these facts the trial court was justified in finding that the Central Company did not assume the primary obligation to pay the freight charges. (Emphasis added.)

Louisville & N. R. Co. v. Central Iron & C. Co., 265 U.S. 59, 68 L.Ed. 900, 904 (1924), supra.

In sharp contrast to the factual circumstances in Louisville, supra., Appellant in the instant proceeding, is named as the "shipper" or consignor on both the Air Waybill for the first shipment, dated August 9, 1982, Exhibit 11-P, and the Air Waybill for the second shipment, dated August 26, 1982, Exhibit 16-P. Furthermore, both the Shipper's Letter of Instructions for the first shipment, Exhibit 10-P, and the second shipment, Exhibits 7-D and 15-P (Addendum A-11, A-10 and A-16) were signed by the Appellant through its representative, Mark Boyce, as shipper and both documents reflect that Appellant, Boyce, consigned both shipments to a destination in Conakry, Guinea, Africa. It is also important to note that in Louisville, supra, Central Company, the original seller of the freight, was, in fact, acting as an agent for Tutwiler & Brooks, the original purchaser of the freight, after Tutwiler & Brooks resold and consigned the freight to Smelters Corporation, and was not in fact, the seller or consignor, whereas in the instant case, Appellant was in fact the seller or consignor of the goods shipped to C.M.C. and/or A.H.W. on August 9, 1982 and August 26, 1982 and consigned both shipments to A.H.W. and/or C.M.C. in Conakry, Africa.

The testimony offered by Appellant's representative, Mark Boyce, in the District Court proceeding, as well as the shipping documents discussed above, clearly establish that Appellant both sold and consigned the two freight shipments to C.M.C. and/or

A.H.W. in Conakry, Africa. Mark Boyce, on direct examination by Appellant's counsel with respect to the relationship between C.M.C. and A.H.W. testified that they were the "same parent company" and further commented with respect to C.M.C. and A.H.W., "I thought it was a name change is all." (TR. 78, Addendum A-4.) Mark Boyce also admitted on direct examination from Appellant's counsel that he initially requested that Respondent deliver the two shipments to Conakry, Africa. (TR. 78, 92, Addendum A-5 and A-6.) These admissions by Mark Boyce together with the Air Waybills for both shipments, Exhibits 11-P and 16-P, which name Appellant as "shipper" or consignor, and the Shipper's Letter of Instructions for both shipments, Exhibits 7-D and 10-P, which Appellant signed as "shipper" or consignor, establish that Appellant was the consignor and seller of the freight shipped to Conakry, Africa, and distinguish the instant proceeding from the Louisville case relied upon by Appellant.

Likewise the second case relied upon by Appellant, Transport Clearings of Los Angeles v. F.J. Purdy Iron & Metal, 289 P.2d 173 (Nev. 1955), supra, is distinguishable on the facts and does not support Appellant's argument that it was acting as an agent for a disclosed principal. As with the Louisville case, supra, Appellant asserts that Transport, supra, is a "case with facts very similar to those of the instant case." Appellant's Brief p. 20.

The Court in Transport, supra, based its ruling on the following facts. Lipsett Steel Products requested F.J. Purdy Iron and Metals to examine certain government owned railroad rail

and to ascertain the freight charges for delivery of the rail to Lipsett in California. F.J. Purdy Iron & Metals and a representative of Arrowhead Freight Lines examined the rail as requested by Lipsett. Arrowhead quoted a freight rate of thirty-eight cents per hundred pounds for California delivery. On the basis of F.J. Purdy Iron & Metals' report, Lipsett bid on the rail and was awarded a government contract of sale. Lipsett then employed F.J. Purdy Iron & Metals to load the rail onto Arrowhead trucks. In order to expedite delivery of the rail shipment, F.J. Purdy Iron & Metals signed a shipping order providing for the thirty-eight cent rate referred to above. The order contained no express promise on the part of F.J. Purdy Iron & Metals to pay the freight charges. The rail was loaded by F.J. Purdy Iron & Metals and was delivered by Arrowhead to Lipsett in California. Lipsett, at the time of delivery, paid the freight charges at the thirty-eight cent rate provided for in the shipping order. Thereafter, an audit by Arrowhead disclosed that the quoted rate was eleven cents less than the lawful rate prescribed by Interstate Commerce Commission schedules. Arrowhead's claim was assigned to Transport Clearings of Los Angeles. Transport, after seeking unsuccessfully to collect the eleven cent differential from F.J. Purdy Iron & Metals appealed. Transport Clearings of Los Angeles v. F.J. Purdy Iron & Metals, 289 P.2d 172, 172-173, supra. The Nevada Supreme Court, based on these facts found that the respondent, F.J. Purdy Iron & Metals, "in point of fact was not the shipper," and that "Arrowhead through knowledge of Lipsett's ownership of the rail and of (F.J. Purdy Iron &

Metals') true position in the transaction, was aware of this fact." Transport Clearings of Los Angeles v. F.J. Purdy Iron & Metals, 289 P.2d 172, 173, supra.

Again, in the instant proceeding, Appellant Boyce's position is distinguishable from that of F.J. Purdy Iron & Metals in the Transport case, supra. Whereas F.J. Purdy Iron & Metals "in point of fact was not the shipper," in the Transport case, supra, Appellant Boyce was, in fact, the shipper of both freight shipments in the instant case.

Appellant, Boyce Equipment, additionally urges that Respondent agreed to deliver the August 9, 1982 and the August 26, 1982 shipments c.o.d. to C.M.C. and/or A.H.W. in Conakry, Africa:

3. Carrier breached its undertaking to collect both freight and Boyce's invoice by negligently delivering the parts without so doing.

Carrier, consistent with Boyce's oral instructions, prepared an air waybill directing the parts be held at the Conakry Airport and a "cost and freight" worksheet and commercial invoice which included the cost of the parts and freight charges. Carrier's agent testified these documents meant the shipment was to be handled on a cost freight basis.

Appellant's Brief at p. 17-18;
and at p. 26,

The carrier's negligent abandonment of the goods without collection of charges actually constituted conversion of the goods for which Boyce could have sought damages equal to the invoice price.

13 Am.Jur. 2d, Carriers §454, p. 925 (1964) describes a c.o.d. contract as follows:

A c.o.d. (collect on delivery) shipment is made under a contract whereby the carrier undertakes to collect from the consignee, upon delivery, a specified amount for and on behalf of the consignor, in addition to the carrier's own charges. Thus, a carrier receiving goods on a c.o.d. shipment acts in two capacities, as bailee to transport the goods and as agent to collect the price of the goods.

Although Appellant does not use the term "c.o.d." or "collect on delivery" in framing its argument, the assertions from Appellant's Brief, supra, directly mirror Am.Jur.'s description of a c.o.d. contract.

Again, testimony from Appellant Boyce Equipment's representatives belies Appellant's argument that Respondent agreed to carry the two shipments on a c.o.d. basis. The following discussion took place between Appellant's representative, Don Boyce, and Judge Fishler with respect to the August 9, 1982 and the August 26, 1982 Shipper's Letter of Instructions, Exhibits 7-D and 10-P.

MR. BOYCE: Well, even on a c.o.d. is the thing that would concern you, because c.o.d. strictly, when it gets to the other end, if they don't pick it up then your liable for them anyway.

THE COURT: That's right. These things have c.o.d. amounts on there and that's left blank, too.

MR. BOYCE: Uh-huh. (Affirmative.) It is. That was not sent out c.o.d. (Emphasis added.)

(TR. 160, Addendum A-3.)

With respect to the Shipper's Letter of Instructions dated August 26, 1982, Exhibit 7-D, Appellant's representative, Mark Boyce, on direct examination from Appellant's counsel, admitted

that he marked the "collect" box (TR. 93) and further testified with respect to the August 9, 1982 shipment, that it was a "freight collect shipment." (TR. 86, Addendum A-1 and A-2.)

In Smith v. Southern Exp. Co., 16 So. 62 (Ala. 1894), the appellant, Belle Smith, brought action against appellee, Southern Express Co., to recover damages for Southern's failure to collect c.o.d. charges upon delivery to the consignee. Smith alleged that she sent, by servant, an unmarked package with instructions written on a small piece of paper, as follows: "Miss A. McCoy, Little Rock, Arkansas, C.O.D. \$86.85." The servant delivered the package and received in turn a receipt from Southern. This receipt nowhere showed that it was a c.o.d. package. Under these facts the Alabama Supreme Court made the following ruling:

. . . Conceding the written memorandum was sent by the plaintiff by her servant, as contended, and that it was delivered to the agent by the servant, it was a mere offer or proposition which was not carried into the bill of lading or receipt issued by the agent, which omission was, in legal effect, a refusal or repudiation of the offer or proposition by the defendant. If the plaintiff, then, desired to insist on the carriage of the package as a C.O.D. package, it was her duty to have refused the receipt, as it was written, and insisted upon the contract being so written as to carry out that object. This she failed to do, but accepted and retained the receipt as the evidence of the contract, and its terms cannot be altered or varied by parol.

Smith v. Southern Exp. Co., 16 So., 62, 63, supra.

The instant case is analagous to the Smith case, supra, in that the Shipper's Letter of Instructions for both shipments, which were given to Appellant at the time of the shipments, served as receipts (Appellant's Brief p. 6) (TR. 57, Addendum A-

7) and failed to indicate that the shipments were to be delivered c.o.d.

Based upon the foregoing authorities, Respondent herein urges this Court to find that Appellant, Boyce Equipment, was not in point of fact, acting as an agent for a fully disclosed principal and that Appellant did not direct Respondent to deliver the shipments c.o.d.

Point II

APPELLANT, BOYCE EQUIPMENT, DIRECTED THAT THE FREIGHT SERVICES BE PERFORMED ON A "FREIGHT COLLECT" BASIS WITHOUT EXECUTING ANY KIND OF NON-RECOURSE AGREEMENT WITH THE RESPONDENT, AND THEREBY ASSUMED THE PRIMARY OBLIGATION TO PAY THE FREIGHT CHARGES FOR SAID SERVICES.

It is a well settled point of law that a shipper or consignor who tenders freight to a motor carrier operating in interstate commerce for transportation is the party primarily liable for freight charges, unless the shipper or consignor and the carrier contractually agree that the carrier will look to another party only for payment.

In Louisville & N.R. Co. v. Central Iron & C. Co., 265 U.S. 59, 66-67, supra, the United State Supreme Court states the following with regard to a shipper's liability for freight charges:

Where the payment is so deferred, the carrier may require that it be made before delivery of the goods; or concurrently with the delivery; or may permit it to be made later. Where the payment is deferred, the contract may provide that the shipper agrees absolutely to pay the charges; or it may provide merely that he shall pay if the consignee does not pay the charges demanded upon delivery of the goods. Or the carrier may accept the goods for shipment solely on account of consignee; and knowing that the shipper is acting merely as

an agent for the consignee, may contract that only the latter shall be liable for the freight charges. Or both the shipper and consignee may be made liable . . .

To ascertain what contract was entered into we look primarily to the bills of lading, bearing in mind that the instrument serves both as a receipt and as a contract. Ordinarily, the person from whom the goods are received for shipment assumes the obligation to pay the freight charges; and his obligation is ordinarily a primary one. This is true even where the bill of lading contains, as here, a provision imposing liability upon the consignee. For the shipper is presumably the consignor; the transportation ordered by him is presumably on his own behalf; and a promise by him to pay therefor is inferred (that is implied in fact), as a promise to pay for goods is implied when one orders them from a dealer.

Appellant, Boyce Equipment, in the instant proceeding denies that the Air Waybills for the two shipments, Exhibits 11-P and 16-P, were shown to, or signed by Appellant before the shipments were made by Respondent. Appellant, however, admits that it signed the Shipper's Letter of Instructions for both shipments, Exhibits 7-D and 10-P (Appellant's Brief p. 22), that it marked both documents "collect" and/or directed both shipments to be made on a "freight collect" basis (TR. 86, 98, Addendum A-1 and A-2) and that it was shown and/or received copies of both documents (Appellant's Brief p. 13).

In Consolidated Freightways, etc. v. Pacheco, 488 F.Supp. 68, at 70, (C.D. Cal. 1979) it was held that a direction by the consignor that a shipment be delivered "freight collect" was insufficient to relieve the consignor of liability:

The procedure by which a shipper or consignor may relieve himself of this primary obligation to pay the freight charges is to execute the

"non-recourse" provisions of the Uniform Bill of Lading upon tendering the freight to the carrier . . .

. . . A direction by the consignor that the shipment be delivered "freight collect" is insufficient to relieve him of liability. See, New York Central Rail Co. v. Buck Co., 2 Cal.2d 384, 41 P.2d 547 (1935). (Emphasis added.)

And, likewise in New York Central Rail Co. v. Buck Co., 2 Cal.2d 384, 41 P.2d 547, 550 (C.D. Cal. 1979), the case cited by Consolidated, supra, it was stated:

. . . The authorities also hold without exception, so far as we are advised, that a mere direction by a consignor or consignee liable for the freight that a shipment be carried or diverted "freight collect" or delivered "upon payment of freight charges" or the like, is insufficient to relieve him of such liability . . .

. . . In New York Central R. Co. v. Warren Ross Lumber Co., 234 N.Y. 261, 137 N.E. 324, 24 A.L.R. 1160, it was held that the language of such a direction was not contractual, its effect being merely to give the carrier an option to demand payment from the person to whom it delivered the goods . . . (Emphasis added.)

Appellant, Boyce Equipment, additionally asserts that "the custom, practice and experience of Boyce and the custom and practice of parts suppliers generally in arranging transportation for buyers of parts is that the parts are nearly always shipped freight collect at the expense of the buyer" (Appellant's Brief p. 3-4), and that "Boyce proceeded on the assumption which was made known to the Carrier that Boyce's normal business practice would apply and that carrier would collect the freight upon delivery to the buyer." New York Central Rail Co. v. Buck Co., 2 Cal.2d 384, 41 P.2d 547, 551, supra, however, followed decisions

which have held that such a custom, although known to the carrier, does not bar the carrier from recovering the freight charges from a shipper liable therefor:

. . . And, according to the following decisions, the freight can be recovered from a shipper liable therefor notwithstanding a custom, known to the carrier, that the amount should be paid by the consignee and deducted from the price of the goods, and the consignee fails to pay; Atchison, S. & S. F. Ry. Co. v. Hunt Bros. Fruit Co., (D.C.) 34 F.2d 582; Moss Lumber Co. v. Michigan Central R. Co., 219 Ala. 593, 123 So. 90; Chicago I. & L. Ry. Co. v. Peterson, 168 Wis. 193, 169 N.W. 558; Pennsylvania R. Co. v. Marcelletti, 256 Mich. 411, 240 N.W. 4, 78 A.L.R. 923.

The above cited authorities, then, clearly establish that, in the instant case, the District Court erred in its interpretation of the legal effect of a bill of lading or shipping contract marked "collect" and/or "freight collect." Near the end of the District Court proceeding, Judge Fishler told Appellant's representative, Don Boyce, "If you'd checked 'collect' on both of these [Shipper's Letters of Instructions], I think you'd be home free on both of them," (TR. 159, Addendum A-8). Judge Fishler then stated that "The basis for their (Boyce Equipment's) liability is that under 10-P (the Shipper's Letter of Instructions for the August 9, 1982 shipment) they agreed and they checked 'prepaid' and signed off. They agreed to pay off the freight in substance" (TR. 163, Addendum A-9).

13 Am.Jur.2d Carriers §477, p. 946 (1964), sets forth the correct interpretation of the legal effect of a stipulation in a bill of lading directing the carrier to collect freight charges from the consignee before making delivery:

The general rule is that stipulations in a bill of lading that the goods are to be delivered to the consignee, "he or they paying freight," or any similar provisions, are for the benefit of the carrier, so that delivery to the consignee without collection of the freight will not release the consignor from liability therefor, unless there is some special stipulation amounting to an express agreement, by which the consignor is to be exonerated. Similarly, a stipulation in a bill of lading that the ultimate consignee, shall pay the freight charges, upon reconsignment by the consignee, has been held not to relieve the latter from liability therefor, although there is some authority to the contrary.

Finally, it should be noted that the Conditions of Contract stated on the reverse of Respondent, Circle Airfreight's, Uniform Air Waybill, contains explicit wording whereby "the shipper agrees to guarantee all charges and advances" and thus, assume the primary obligation for the payment of the freight charges. Specifically, the Uniform Air Waybill issued by Circle Airfreight (Addendum A-17), in paragraph five (5) of the Conditions of Contract explicitly provides, inter alia:

The shipper guarantees payment of all charges and advances.

In addition, paragraph seven (7) in part, provides as follows:

Carrier is authorized (but shall be under no obligation) to advance any duties, taxes or charges and to make any disbursements with respect to the goods, and shipper, owner, or consignee shall be jointly and severally liable for the reimbursement thereof. No carrier shall be under obligation to incur any expense or to make any advance in connection with the forwarding or reforwarding of the goods except against repayment by the shipper. (Emphasis added.)

Finally, the Conditions of Contract, in paragraph twelve (12) prohibits any alteration or modification of any provision contained therein:

No agent, servant or representative of Carrier has authority to alter, modify or waive any provision of this contract.

Thus, it is clear that the Conditions of Contract set forth on the reverse side of Respondent's Uniform Air Waybill precluded any contractual agreement between Appellant and Respondent whereby Respondent agreed to look only to A.H.W. and/or C.M.C. for payment of the outstanding freight charges.

Based upon the foregoing, Respondent herein, respectfully submits that Appellant, Boyce Equipment, directed that both the August 9, 1982 and the August 26, 1982 shipments be delivered on a "freight collect" basis without signing any kind of non-recourse agreement with Respondent, and thereby assumed the primary obligation to pay the freight charges for both shipments, and that the District Court's determination that the Shipper's Letter of Instruction related to the August 9, 1982 and August 26, 1982 shipments were materially distinguishable with respect to their legal effect, was without merit.

Point III

RESPONDENT, CIRCLE AIRFREIGHT, WAS UNDER NO OBLIGATION, CONTRACTUAL OR OTHERWISE, TO APPELLANT, BOYCE EQUIPMENT, TO INSIST UPON PAYMENT FROM CONSIGNEE OF THE FREIGHT CHARGES WHICH ARE THE SUBJECT MATTER OF THIS PROCEEDING BEFORE MAKING DELIVERY, AND IS THEREFORE, NOT ESTOPPED FROM COLLECTING THE FULL AMOUNT OF SAID CHARGES FROM APPELLANT.

Finally, Appellant urges that Respondent "is equitably estopped from claiming Boyce is liable to pay the freight charges by [Respondent's] conduct in causing its own loss and for that

matter, Boyce's loss, by its conduct in transporting the parts with the direction that freight be collected at the point of destination." Appellant's Brief p. 29.

Again, Appellant overlooks the well established legal principle that a direction by a consignee that a shipment be carried "freight collect" or delivered "upon payment of freight charges" or the like, is insufficient to relieve the consignor of its liability for freight charges, and that the language of such a direction is not contractual, its effect being merely to give the carrier an option to demand payment from the consignee. See, generally Point II, supra. In Pennsylvania R. Co. v. Marcelletti, 78 A.L.R. 923, 925 (Mich. 1932), the Michigan Supreme Court based its finding that, delivery by the carrier in violation of such a provision will not relieve the shipper from the obligation to pay the freight, upon the following:

"To Whom Carrier May Look for Payment --
Ordinarily a carrier has a right to look for his compensation to the person who required him to perform the service by causing the goods to be delivered to him for transportation, and that person is generally of course the shipper named in the bill of lading or the consignor. The fact that the latter does not own the goods has been held immaterial, on the ground that the carrier's contract cannot be made to depend on what may prove to be the legal effect of the negotiations between the consignor and the consignee on the title to the property which is the subject of transportation. Furthermore even though there is a stipulation in a bill of lading providing that the consignee shall pay the freight, that does not of itself relieve the consignor, and a carrier is not bound at his peril to enforce the payment of freight from the consignees. The usual clause in bills of lading, that a cargo is to be delivered to the person named, or his assignees, 'he or they paying freight', is

only inserted as a recognition or assertion of the right of the master of a ship to retain the goods carried until his lien is satisfied by payment of the freight; it imposes no obligation on him to insist on payment before making delivery of the cargo. If he sees fit to waive his right of lien and deliver the goods without payment of the freight, his right to resort to the shipper for compensation still remains . . ." (Emphasis added.)

Finally, it should be noted that, under the circumstances of this case, any agreement by Respondent to look only to A.H.W. and/or C.M.C. for the outstanding freight charges without recourse to the Appellant, would violate the provisions of the Elkins Act prohibiting discrimination among shippers. See 49 U.S.C. §10761 (1979). With respect to this point the Marcelletti court, *supra*, commented:

. . . Discrimination between shippers is prohibited by statute. Hence as a matter of public policy interstate carriers are required not only to make but to collect for like services uniform charges from shippers. 4 R.C.L. 857. In carrying out this policy, it has been held: "It is well settled . . . that though the goods are only to be delivered upon payment by the consignee of the freight charges, the shipper is not relieved on account of a delivery by the carrier of the goods to the consignee without collecting the charges, though credit is voluntarily extended to the consignee. This right can only be barred by limitations or contract."

Pennsylvania R. Co. v. Marcelletti, 78 A.L.R. 923, 925, *supra*. And, in Louisville & Nashville R. Co. v. Central Iron & C. Co., 265 U.S. 59, 65, *supra*, it was held:

The amount of the freight charges legally payable was determined by applying the tariff rate to the actual weight. Thus, they were fixed by law. No contract of the carrier could reduce the amount legally payable, or release from liability a shipper who had

assumed the obligation to pay the charges. Nor could any act of omission of the carrier (except the running of the Statute of Limitations) estop or preclude it from enforcing payment of the full amount by a person liable therefor. (Emphasis added.)

Respondent herein admits that it may look to A.H.W. and/or C.M.C. for payment of the outstanding freight charges, but asserts that this does not affect its right to look only to Appellant for said charges. Respondent further asserts that Appellant as shipper and as guarantor of the freight charges is the proper party to which Respondent should first look for payment of said charges. Moreover, Respondent's failure to join A.H.W. and/or C.M.C. as a party to this action, under the above cited authorities, cannot estop or preclude it from enforcing payment of the full amount of the freight charges by the Appellant.

CONCLUSION

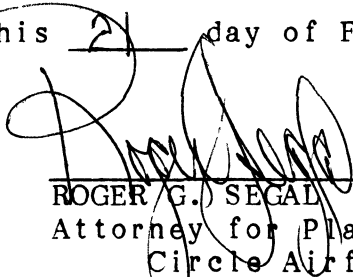
Appellant, Boyce Equipment, was in point of fact, the seller, shipper and consignor of both the August 9, 1982 and August 26, 1982 shipments and was not acting on behalf of a fully disclosed agent. Furthermore, Appellant did not direct the shipments to be delivered c.o.d.

Appellant's direction that both shipments be delivered on a "collect" or "freight collect" basis was not contractual, its effect being merely to give the carrier an option to demand payment from the consignee. Such a direction is, therefore, insufficient to relieve the consignor of liability for the freight charges. Moreover, the Conditions of Contract set forth on the reverse side of Respondent's Uniform Air Waybill, contains

provisions which are not subject to alteration or modification that impose absolute liability upon the shipper to guarantee all charges and advances, and thus assume the primary obligation for the payment of the freight. These provisions clearly precluded any contractual agreement between Appellant and Respondent whereby Respondent agreed to look to another party only for payment of the freight.

Finally, Appellant's argument that Respondent is equitably estopped from claiming Appellant is liable for the unpaid freight by its conduct in delivering the shipments without collecting the freight, overlooks the well established legal principle that a direction by a shipper that a shipment be carried "freight collect" is insufficient to relieve the shipper of its liability for the freight. Indeed, such a direction imposes no obligation on the carrier to insist upon payment of the freight before delivery. If the carrier delivers without collecting the freight, and thereby relinquishes his lien on the goods, the carrier's right to resort to the shipper for compensation still remains. Moreover, it is well settled that this right can only be barred by limitations or contract.

RESPECTFULLY SUBMITTED this 21 day of February, 1986.



ROGER G. SECAL
Attorney for Plaintiff-Respondent
Circle Airfreight
66 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 532-2666

CERTIFICATE OF SERVICE

Served the foregoing Brief of Respondent by delivering four copies thereof to David S. Cook, Attorney at Law, Attorney for Defendant and Appellant, Boyce Equipment, 85 West 400 North, Bountiful, Utah 84010 this 21 day of February, 1986.



Roger G. Segal

ADDENDUM TO BRIEF OF RESPONDENT

| | |
|---|------|
| Reporters Transcript, page 86..... | A-1 |
| Reporters Transcript, page 93..... | A-2 |
| Reporters Transcript, page 160..... | A-3 |
| Reporters Transcript, page 73..... | A-4 |
| Reporters Transcript, page 78..... | A-5 |
| Reporters Transcript, page 92..... | A-6 |
| Reporters Transcript, page 57..... | A-7 |
| Reporters Transcript, page 159..... | A-8 |
| Reporters Transcript, page 163..... | A-9 |
| Exhibit 7-D, Shipper's Letter of Instructions..... | A-10 |
| (Boyce Original Copy) dated 8/26/82 | |
| Exhibit 10-P, Shipper's Letter of Instructions..... | A-11 |
| dated 8/9/82 | |
| Exhibit 11-P, Air Waybill dated 8/9/82..... | A-12 |
| Exhibit 16-P, Air Waybill dated 8/27/82..... | A-13 |
| Exhibit 14-P, Boyce Invoice to C.M.C. Corp..... | A-14 |
| dated 8/6/82 | |
| Exhibit 23-P, Carrier's Commercial Invoice..... | A-15 |
| dated 8/9/82 | |
| Exhibit 15-P, Shipper's Letter of Instructions..... | A-16 |
| (Carrier's second copy) dated 8/26/82 | |
| Reverse side of Air Waybill reflecting..... | A-17 |
| Terms and Conditions [Exhibit 11-P (Addendum A-12) | |
| and Exhibit 16-P (Addendum A-13)] | |

(Circle)

1 "CHECK."

2 Q. OKAY. I DIRECT YOU TO THE -- WELL, LET
3 ME ASK YOU: WAS THERE ANY DISCUSSION WITH THE MAN FROM
4 CIRCLE AIRFREIGHT IN RESPECT TO THIS FORM AT THE TIME
5 WHICH BOX, IF ANY, WAS GOING TO BE CHECKED?

6 A. YES.

7 Q. JUST ASKING YOU WHETHER THERE WAS ANY
8 DISCUSSION.

9 A. YES, THERE WAS. AND IT WAS GOING COLLECT.
10 IT WAS STIPULATED RIGHT THERE THAT THIS FREIGHT WAS A
11 COLLECT FREIGHT SHIPMENT.

12 Q. YOU SAY IT WAS STIPULATED?

13 A. YES.

14 Q. WHAT DO YOU MEAN IT WAS STIPULATED? DID
15 YOU DO SOMETHING --

16 A. NO.

17 Q. -- AS FAR AS THIS ORAL CONVERSATION?

18 A. JUST TOTALLY ORAL. OUR MAIN CONCERN AND
19 THEIR CONCERN WAS FAST. I MEAN, THEY WANTED IT FAST;
20 AND THAT WAS SOMETHING THAT JUST DIDN'T COME UP.

21 BUT I DID TELL THEM, I SAYS THAT THIS IS
22 A COLLECT SHIPMENT; AND HE COMPLETELY ACKNOWLEDGED THAT.

23 Q. WELL, WHEN YOU SAY "HE COMPLETELY ACKNOWLEDGED
24 THAT," LET'S HAVE THE CONVERSATION.

25 A. I -- IT'S -- IT'S -- I WISH I COULD GET IT

EX. 10 - 4.

1 EXHIBIT D-7, SHIPPER'S LETTER OF INSTRUCTIONS, DATED 8-26-1982.

2 DO YOU SEE THAT DOCUMENT?

3 A. UH-HUH. (AFFIRMATIVE.)

4 Q. THAT'S A WHITE COPY?

5 A. YES.

6 Q. BEARS SOME HANDWRITTEN MATERIAL?

7 A. YES. THAT'S ALL -- ALL MINE EXCEPT FOR
8 THE LOWER RIGHT-HAND SIDE.

9 Q. IT'S ALL YOURS EXCEPT FOR MR. SHEPARD'S
10 SIGNATURE AND A DATE APPEARING IMMEDIATELY TO THE RIGHT
11 OF YOUR SIGNATURE?

12 A. THAT'S RIGHT.

13 Q. THAT DOCUMENT HAS A CHECK MARKED IN THE
14 BOX "COLLECT." DO YOU HAVE ANY RECOLLECTION OF WHEN THAT
15 CHECK MARK WAS INSERTED?

16 A. AT THE TIME, AT THE TIME OF THE PICKUP.

17 Q. WAS THAT A MULTI-COPY DOCUMENT, OR DON'T
18 YOU RECALL?

19 A. I DON'T RECALL.

20 Q. WHAT WAS THE NEXT COMMUNICATION, IF ANY,
21 YOU PARTICIPATED IN WITH CIRCLE AIRFREIGHT ABOUT THESE
22 MATTERS OR THIS MATTER?

23 A. THEY HAD CALLED ME MAYBE TWO, THREE WEEKS
24 AFTER THE LAST SHIPMENT AND HAD ASKED ME IF WE HAD --
25 IF WE HAD MORE FREIGHT THAT WAS -- THAT WAS GOING BACK

1 TO AFRICA." HE WOULDN'T BE ON NOTICE BECAUSE HE WOULDN'T
2 KNOW IF YOU'VE ALREADY BEEN PREPAID FOR THE FREIGHT AND
3 PREPAID FOR THE GOODS. AND HE MAY THINK, "WELL, JEEZ,
4 WHEN YOUR OX IS MIRED, YOU'VE GOT TO DO WHATEVER IS NECESSARY
5 TO GET THINGS GOING,"AND MAYBE IT'S WORTH SOMEBODY TO
6 PAY FIVE THOUSAND FOR SOME TRUCK PARTS AND THEN PAY FIVE
7 THOUSAND FOR FREIGHT.

8 THIS WOULD NOT PUT THEM ON NOTICE. THEY
9 WOULD HAVE NO IDEA WHAT YOU'RE DOING. I DON'T THINK
10 THEY HAVE A DUTY TO INQUIRE AS TO THAT.

11 MR. BOYCE: WELL, EVEN ON A C.O.D. IS THE
12 THING THAT WOULD CONCERN YOU, BECAUSE C.O.D. STRICTLY,
13 WHEN IT GETS TO THE OTHER END, IF THEY DON'T PICK IT
14 UP THEN YOU'RE LIABLE FOR THEM ANYWAY.

15 THE COURT: THAT'S RIGHT. THESE THINGS
16 HAVE C.O.D. AMOUNTS ON THERE AND THAT'S LEFT BLANK, TOO.

17 MR. BOYCE: UH-HUH. (AFFIRMATIVE.) IT
18 IS. THAT WAS NOT SENT OUT C.O.D.

19 THE COURT: I'M SORRY, MR. BOYCE.

20 MR. SEGAL: YOUR HONOR, IS THE JUDGMENT
21 TOGETHER WITH INTEREST FROM THE DATE OF THE INVOICE, OR
22 30 DAYS THEREAFTER?

23 THE COURT: THE INVOICE -- WHEN WAS YOUR
24 FIRST INVOICE? LET ME SEE HERE. I ONLY -- THE AIRWAY
25 BILL --

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Q. MR. BOYCE, HOW LONG HAVE YOU BEEN INVOLVED IN THE PARTS BUSINESS IN CONNECTION WITH BOYCE EQUIPMENT COMPANY?

Q. WHAT IS THE GENERAL NATURE OF BOYCE
EQUIPMENT'S BUSINESS?

Q. BASICALLY WHERE DO YOUR CUSTOMERS COME FROM?

Q. ANY OUT OF THE U. S.?

Q. DID YOU DEAL ON BEHALF OF BOYCE EQUIPMENT COMPANY WITH A.H.W., INC. AND C.M.C. IN THE FALL OF 1982?

Q. IN CONNECTION WITH THAT, DID YOU COME TO UNDERSTANDING OF THE RELATIONSHIP BETWEEN THE ONE NAMED , INC. AND THE OTHER NAME C.M.C. CORP.?

Q. I HAND YOU -- LET'S SEE -- WHAT HAS BEEN
USUALLY MARKED AS EXHIBIT 1-D AND ASK IF YOU RECOGNIZE

1 Q. AND WHERE IS THAT?

2 A. THAT'S IN NORTH SALT LAKE, 51 SOUTH HIGHWAY
3 89.

4 Q. OKAY, PROCEED. THEN YOU DIALED CIRCLE
5 AIRFREIGHT?

6 A. I DIALED CIRCLE AIRFREIGHT AND I CALLED --
7 I BELIEVE IT WAS A GENTLEMAN. I'M NOT SURE.

8 Q. WELL, DID SOMEBODY ANSWER THE PHONE?

9 A. THEY ANSWERED THE PHONE, SAYS -- SAID, "CIRCLE
10 AIRFREIGHT."

11 Q. JUST SLOW DOWN.

12 A. I'M SORRY.

13 Q. I WANT THE CONVERSATIONS, THE SUBSTANCE
14 OF IT, AS BEST YOU CAN RECALL.

15 A. OKAY. I CALLED CIRCLE AIRFREIGHT AND ASKED
16 THEM IF THEY COULD ARRANGE SHIPPING FOR A LARGE BOX AND
17 A LOT OF WEIGHT TO GO TO CONAKRY, AFRICA.

18 AND HE SAYS, "YES, WE CAN."

19 AND I SAYS, "WELL, IT'S GOING TO TAKE ME
20 A COUPLE OF DAYS TO GET IT READY."

21 AND THEY SAYS, "JUST GIVE ME A CALL WHEN
22 IT'S READY."

23 AND AT THAT TIME I GOT OFF THE PHONE AND
24 COMMENCED PACKAGING THE SHIPMENT UP.

25 Q. WAS THERE ANYTHING ELSE IN THAT PHONE

1 A. -- CONVERSATION, I MEAN.
2 Q. WE ARE NOT INTERESTED --
3 A. "LET ME GET THE FORKLIFT. I'LL COME AROUND
4 AND LOAD IT UP FOR YOU."
5 THE ONLY -- I MENTIONED TO HIM, YOU KNOW,
6 THAT IT WAS GOING A LONG WAYS, AGAIN; AND HE WAS KIND
7 OF SURPRISED, YOU KNOW, FOR HOW FAR IT WAS GOING AND FOR
8 THE WEIGHT THAT WE HAD -- THE WEIGHT THAT WE HAD THERE.
9 AND AS WE WAS LOADING IT, MY DAD MADE THE
10 MENTION TO HIM THAT -- HE SAYS, UM, HE SAYS, "BOY THIS
11 IS GOING TO BE A LOT OF FREIGHT. IT'S A GOOD THING WE
12 DON'T HAVE TO PAY THE FREIGHT BILL."
13 AND HE SAYS, "SO DO I?"
14 THAT'S FROM THE CIRCLE AIRFREIGHT DRIVER.
15 Q. OKAY. WAS THERE ANYTHING MORE TO THAT
16 CONVERSATION?
17 A. NO.
18 Q. THAT YOU RECALL?
19 A. NO.
20 Q. WERE THERE ANY DOCUMENTS PREPARED OR SIGNED
21 BY YOU AT THAT TIME?
22 A. YEAH. WE DID THE OTHER SHIPPER LETTER OF --
23 Q. INSTRUCTIONS?
24 A. SHIPPER -- OF INSTRUCTIONS.
25 Q. I HAND YOU WHAT'S BEEN MARKED AS DEFENDANT'S

1 DOCUMENT?

2 A. IT LOOKS LIKE THE 26TH OF AUGUST 1982.

3 Q. AND AFTER THAT DOCUMENT WAS COMPLETED, DO
4 YOU HAVE SOME USE FOR THAT DOCUMENT?

5 A. THIS DOCUMENT BASICALLY IS JUST A NOTE THAT
6 WE RECEIVED THE FREIGHT FROM THE CUSTOMER.

7 Q. DID YOU PERSONALLY RECEIVE THE FREIGHT?

8 A. YES.

9 Q. AT THE TIME YOU RECEIVED THE FREIGHT WERE
10 THERE ANY CONVERSATIONS?

11 A. I DON'T REMEMBER. THERE PROBABLY WAS.

12 Q. TO THE BEST OF YOUR RECOLLECTION, DID YOU
13 PARTICIPATE ANY FURTHER IN THE TRANSACTION DATED AUGUST
14 26TH?

15 A. NO.

16 Q. ARE YOU AWARE OF WHETHER OR NOT THE INITIAL
17 SHIPMENT OF AUGUST 6TH WAS ACTUALLY SHIPPED?

18 A. OF AUGUST THE 9TH OR THE 6TH?

19 Q. AUGUST 9TH, EXCUSE ME.

20 A. YES.

21 Q. AND HOW ARE YOU AWARE?

22 A. THROUGH TELEXES FROM OUR OVERSEAS OFFICES
23 AND THEN THROUGH CONSTANT UPDATES. WHEN WE SENT A SHIPMENT
24 OUT, I WOULD CONTINUALLY MONITOR THE SHIPMENT UNTIL IT
25 WAS RECEIVED ON THE OTHER END.

1 ANY WORSE FOR YOU IN THIS SCENARIO. BUT WHEN YOU SIGNED
2 THAT AND THE BOX IS CHECKED, I THINK THAT WHEN YOU SIGN
3 THESE THINGS YOU'VE GOT TO VERIFY OR CHECK TO MAKE SURE
4 ALL THE BOXES ARE CHECKED.

5 IT'S JUST LIKE WHEN I'M THE JUDGE, MR. COOK
6 AND MR. SEGAL SOMETIMES COME TO ME AND THEY SAY, "JUDGE,
7 I WANT YOU TO SIGN THIS," AND I TELL THEM I DON'T SIGN
8 ANYTHING WITH BLANKS. AND IF THERE IS A CHECK, THEN
9 SOMETIMES I'LL INITIAL IT. I THINK THAT WOULD BE A LITTL
10 BIT MUCH.

11 BUT IF, BEFORE YOU'D SIGNED OFF, IF YOU'D
12 CHECKED "COLLECT," I THINK IF YOU HAD DOCUMENTS INDICATIN
13 THAT YOU HAD "COLLECT" ON BOTH OF THESE, I THINK YOU'D
14 BE HOME FREE ON BOTH OF THEM.

15 MR. BOYCE: I'LL WORK HARDER TO FIND IT
16 SOMEHOW, BUT IT JUST BLOWS MY MIND.

17 THE COURT: AND OF COURSE YOUR POINT THAT,
18 "JEEZ," YOU WOULD NOT SIGN, I MEAN, "PUTTING THOSE THINGS
19 I SAW SOMEWHERE AND I DON'T KNOW WHERE, BUT I SAW SOMEWHER
20 THAT WENT BY AIR FRANCE TO GUINEA," AND TO PUT AXLES AND
21 A 350 CUMMINS BELL HOUSING ON AN AIR FRANCE JET, I
22 AGREE WITH YOU, IT BORDERS ON INSANITY.

23 BUT THERE WOULD BE NO WAY THE SHIPPER OR
24 THE TRANSPORTATION COMPANY WOULD KNOW. JUST LOOKING
25 AT THIS THEY SAY, "JEEZ, THIS GUY'S FLYING TRUCK PARTS

1 NOT, WE'LL BE BACK IF THAT'S AGREEABLE TO THE COURT.

2 THE COURT: OKAY. BASICALLY WHAT I'M SAYING
3 IS: BASED UPON THOSE CONVERSATIONS THAT THE BOYCES
4 HAD WITH CIRCLE, THEY KNEW THAT THEY WERE SHIPPING AS
5 AGENTS BUT WOULD NOT BE LIABLE IN THE ORDINARY COURSE
6 OF EVENTS; AND I THINK THAT IT'S SET FORTH -- I THINK
7 JUSTICE BRANDEIS SET IT FORTH IN THAT LOUISVILLE CASE.
8 THE BASIS FOR THEIR LIABILITY IS THAT UNDER 10-P THEY
9 AGREED AND THEY CHECKED "PREPAID" AND SIGNED OFF. THEY
10 AGREED TO PAY OFF THE FREIGHT IN SUBSTANCE.

11 MR. BOYCE: YOUR HONOR, WE DIDN'T SIGN
12 IT'S PREPAID AND I HOLD TO THAT FACT. I JUST CAN'T --
13 I JUST CAN TELL -- HE EVEN ADMITTED -- WELL, I'VE GOT
14 A LOT OF MONEY HERE.

15 THE COURT: I UNDERSTAND.

16 MR. BOYCE: AND IT BOTHERS ME TO A DEGREE;
17 AND NOT THAT I MISJUDGE YOU AS A JUDGE OR ANYTHING, AND
18 I KNOW YOU HAVE A HELL OF A HARD RESPONSIBILITY --

19 THE COURT: WELL, IF YOU HAD ANOTHER 7-D --

20 MR. BOYCE: I'LL FIND ONE, SO HELP ME GOD.

21 MR. M. BOYCE: I'LL FIND THAT BUGGAR.

22 THE COURT: YOU'RE GOING TO HAVE TO TALK
23 TO YOUR ATTORNEY ABOUT MOTIONS FOR A NEW TRIAL.

24 PREPARE THE FINDINGS OF FACTS AND CONCLUSIONS
25 OF LAW, AND ADHERE TO 2.9 OR HAVE MR. COOK SIGN OFF AS

CLEVELAND HOUSTON MILWAUKEE NEWARK PHILADELPHIA ST LOUIS SALT LAKE CITY TULSA WICHITA
CONSIGNEE TO N^o FAMILY SKILL Also Notify _____
Street Address BP 63 (Name) HOLD AT TSCM
City & Country CONAKRY, GUINEA AFRICA (Address)

| Marks & Numbers | No. of Pkgs. | Quantity and Nature of Goods | Dimensions of Volume | Gross Weight | SHIPPER'S DECLARED VALUE | |
|-----------------|--------------|------------------------------|----------------------|--------------|--------------------------|--------------|
| | | | | | For Customs Only | For Carriage |
| 1 | 1 | Box TRUCK PARTS | | | | |
| | | Country of Origin | | | | |

DEFENDANT
EXHIBIT
7-D
CB8-626

SPECIAL INSTRUCTIONS

INSURANCE: \$ _____ (No Insurance Unless Declared) CHARGES: PREPAID ☐ COLLECT ☒ COD Amt. \$ _____
DOCUMENTS TO ACCOMPANY AIRWAY BILL: COMMERCIAL INVOICE ☐ CONSULAR INVOICE ☐ CERTIFICATE OF ORIGIN ☐
OTHER _____
SHIPPER Ugal Bina ADDRESS _____
Signature Bina E. Bina Date 8/26/82 X _____
FORM 12003 (8/79) (Received by Shipper)

CONSIGNED TO A. H. W. Corp
 CINCINNATI CLEVELAND HARTFORD HOUSTON LOUISVILLE MIAMI MILWAUKEE NEW YORK NEWARK PHILADELPHIA PORTLAND RACINE ST. LOUIS SALT LAKE CITY
 Street Address _____ Also Notify _____ (Name) _____
 City & Country CONAKRY, GUINEA AFRICA (Address) _____

| Marks & Numbers | No. of Pkgs. | Quantity and Nature of Goods | Dimensions of Volume | Gross Weight | SHIPPER'S DECLARED VALUE | |
|-----------------|--------------|------------------------------|----------------------|--------------|--------------------------|-----|
| | | | | | For Customs Only | For |
| 2 | 2 | Box Truck Parts | | | | |
| | | Country of Origin _____ | | | | |

SPECIAL INSTRUCTIONS _____



INSURANCE: \$ _____ (No Insurance Unless Declared)

DOCUMENTS TO ACCOMPANY AIR WAYBILL: COMMERCIAL INVOICE ☐ OTHER ☐ CHARGES: PREPAID ☒ COLLECT ☐ COD Amt. \$ _____

SHIPPER W. H. Brown ADDRESS _____

Signature B. J. Brown Date 8/9/82

FORM 12003 (8/79)

X [Signature]
(Received by Drayman)

COUNTRY, PORT OF GUINEA, AFRICA

ALSO NOTIFY

SAME AS ABOVE

SHIPPER'S REF. NO.

NONE

SHIPPER'S NAME & ADDRESS
EQUIP. CO.
SOUTH HWY 71
NORTH SALT LAKE CITY, UTAH
ATTN MARK

NAME AND ADDRESS OF ISSUING CARRIER/AGENT
EQUIP. CO.
SOUTH HWY 71
NORTH SALT LAKE CITY, UTAH 84116

NAME OF ISSUING CARRIER/AGENT

DOMESTIC AIR

SIGNATURE OF ISSUING CARRIER/AGENT

DATE EXECUTED BY

17 AUG

298-3401

| NUMBER OF PACKAGES | METHOD OF PACKING | GROSS WEIGHT (KILOS) | COMM. | DIMENSIONS (INCHES) | NATURE AND QUANTITY OF GOODS / MARKS AND NUMBERS |
|--------------------|-------------------|----------------------|-------|---------------------|--|
| 1 | CRATE | 712 | TAH | 15X 46X 32 | 1 MOTOR VEHICLE PARTS FOR TRUCK |



| TOTALS | COUNTRY OF ORIGIN | These commodities licensed by the United States for ultimate destination |
|--------|-------------------|--|
| | TAH | Diversion contrary to United States law prohibited |

| DECLARED VALUE CARRIAGE | DECLARED VALUE CUSTOMS | AMOUNT OF INSURANCE | BEYOND CHARGES |
|-------------------------|------------------------|---------------------|----------------|
| | | | |

| COMMODITY | VOLUME WEIGHT | CHARGE WEIGHT | RATE | PREPAID | DESCRIPTION | COLLECT |
|-----------|---------------|---------------|------|---------|------------------|---------|
| | | | | | FREIGHT CHARGE | |
| | | | | | FREIGHT CHARGE | |
| | | | | | FREIGHT CHARGE | |
| | | | | | VALUATION CHARGE | |

| ANCE COMPANY / POLICY NO | RATE | INSURANCE |
|--------------------------|------|-----------|
| | | |

| SE COMPANY | DRAWAGE CODE | PICK UP |
|------------|--------------|---------|
| EQUIP. CO. | | 71.80 |

| COMPANY | BILL NUMBER | INLAND FREIGHT SERVICES |
|---------|-------------|-------------------------|
| | | |

| CONS. FEE ADVANCE | OTHER ADVANCES | EXPORT DECLARATION |
|-------------------|----------------|--------------------|
| | | |

| DOCUMENTATION AND/OR FORWARDING FEE | HANDLING LETTER OF CREDIT/SIGHT DRAFT | MESSENGER SERVICE |
|-------------------------------------|---------------------------------------|-------------------|
| | | |

| POSTAGE AND MAILING SERVICE | WIRES / TWX / TELEX CABLES | TELEPHONE EXPENSE |
|-----------------------------|----------------------------|-------------------|
| | | |

| TRANSFER FEE / AIRPORT TRANSFER | SPECIAL SERVICES (NO ADVANCE) | TOTALS |
|---------------------------------|-------------------------------|--------|
| | | |

| FILED COM. INV | TOTALS |
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| FILED COM. INV | TOTALS |
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| FILED COM. INV | TOTALS |
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Shipper has requested insurance as provided above, shipment is insured in the amount of \$10,000.00 by the shipper (recovery being limited to actual loss) in accordance with Paragraph 8 on the reverse hereof. Insurance is payable to shipper unless another payee is designated in writing by the shipper.

Carrier certifies above described goods were for carriage SUBJECT TO THE CONDITIONS ON THE REVERSE HEREOF the goods then being in apparent good order and condition except as noted hereon



COPY 4 - ORIGIN ALPHA FILE COPY

A-3 ADDENDUM A-12

VIA SAGETRA
CONAKRY REP OF GUINEA AFRICA

MR SYLLA
PL NOTIFY CNEE UPON ARRIVAL
HOLF AT TERMINAL HE WILL PICK IT UP

SHIPPER'S NAME & ADDRESS
BOYCE EQUIPT & PARTS CO
5 SOUTH HWY 91
NORTH LAKE CITY UT 00000
ATT MARK

SHIPPER'S PURCHASE ORDER NO. NONE

SHIPPER'S REF. NO. NONE

NAME AND ADDRESS OF ISSUING CARRIER/AGENT
CIRCLE AIR FREIGHT CORP.
140 AMELIA EARHART DRIVE,
ALT LAKE CITY, UTAH 84116.

NAME OF ISSUING CARRIER/AGENT

WOODRUFF
SIGNATURE OF ISSUING CARRIER/AGENT

8 DATE EXEC

17 AUG

| NUMBER OF PACKAGES | METHOD OF PACKING | GROSS WEIGHT (KILOS) | COMM. | DIMENSIONS (INCHES) | NATURE AND QUANTITY OF GOODS / MARKS AND NUMBERS |
|--------------------|-------------------|----------------------|-------|---------------------|--|
|--------------------|-------------------|----------------------|-------|---------------------|--|

| | | | | | |
|---|------|-------|----|------------|-------------|
| 1 | UNIT | 323.0 | RR | 47X 42X 51 | TRUCK PARTS |
|---|------|-------|----|------------|-------------|



| 1 | TOTALS | 10 COUNTRY OF ORIGIN | These commodities licensed by the United States for ultimate destination |
|---|--------|----------------------|--|
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| | | | |
|---|-------|--------|--------|
| 1 | 233.0 | U.S.A. | GUINEA |
|---|-------|--------|--------|

| 12 DECLARED VALUE CARRIAGE | 11 DECLARED VALUE CUSTOMS | AMOUNT OF INSURANCE | BEYOND CHARGES | 13 |
|----------------------------|---------------------------|---------------------|----------------|----|
|----------------------------|---------------------------|---------------------|----------------|----|

| 5 COMMODITY | 6 VOLUME WEIGHT | 14 CHARGE WEIGHT | 16 RATE | PREPAID | DESCRIPTION | COLLECT |
|-------------|-----------------|------------------|---------|---------|-------------|---------|
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| | | | | | | |
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| FAK | 287.0 | 323.0 | 7.28 | 2351.44 | 20 FREIGHT CHARGE | 21 |
|-----|-------|-------|------|---------|-------------------|----|

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| | | | | | 22 FREIGHT CHARGE | 23 |
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| | | | | | 24 FREIGHT CHARGE | 25 |
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| | | | | | 26 VALUATION CHARGE | 27 |
|--|--|--|--|--|---------------------|----|

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| | | | | | 30 INSURANCE | 31 |
|--|--|--|--|--|--------------|----|

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|--------------------------------|------|--|--|--|------------|--|
| INSURANCE COMPANY / POLICY NO. | RATE | | | | 50 PICK UP | |
|--------------------------------|------|--|--|--|------------|--|

| | | | | | | |
|---------------|-----------------|--|--|--|----------------------------|--|
| AYAGE COMPANY | DRAYAGE CODE 17 | | | | 40 INLAND FREIGHT SERVICES | |
|---------------|-----------------|--|--|--|----------------------------|--|

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|-------------|-------------|--|--|--|-------------------------|--|
| AND COMPANY | BILL NUMBER | | | | 45 CONSULAR FEE ADVANCE | |
|-------------|-------------|--|--|--|-------------------------|--|

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| | | | | | 46 OTHER ADVANCES | |
|--|--|--|--|--|-------------------|--|

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| | | | | | 55 EXPORT DECLARATION | |
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| | | | | | 56 DOCUMENTATION AND/OR FORWARDING FEE | |
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| | | | | | 60 HANDLING LETTER OF CREDIT/SIGHT DRAFT | |
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| | | | | | 63 MESSENGER SERVICE | |
|--|--|--|--|--|----------------------|--|

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| | | | | | 64 POSTAGE AND MAILING SERVICE | |
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| | | | | | 65 WIRES / TWX / TELEX CABLES | |
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| | | | | | 66 TELEPHONE EXPENSE | |
|--|--|--|--|--|----------------------|--|

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| | | | | | 70 TRANSFER FEE / AIRPORT TRANSFER | |
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| | | | | | 72 SPECIAL SERVICES (NO ADVANCE) | |
|--|--|--|--|--|----------------------------------|--|

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| | | | | | 73 COMM INVOICE | |
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| | | | | | 18 TOTALS | 19 |
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| | | | | | US DOLLARS | |
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(801) 233-3401

10930 NORTH REDWOOD ROAD • NORTH SALT LAKE

450-3

3468

3768 Mr. D. M. C. C. C.

94549
SPEC. CHIEF
OFFER

CM 511

Charge

W. C. C. C. C.

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FINANCE CHARGE OF 14% PER MONTH (18% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 18% PER MONTH (21.6% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 21.6% PER MONTH (25.92% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 25.92% PER MONTH (31.104% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 31.104% PER MONTH (37.3248% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 37.3248% PER MONTH (44.78976% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 44.78976% PER MONTH (53.747712% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 53.747712% PER MONTH (64.4972544% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 64.4972544% PER MONTH (77.39670528% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 77.39670528% PER MONTH (92.876046336% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 92.876046336% PER MONTH (111.4512556032% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 111.4512556032% PER MONTH (133.74150672384% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 133.74150672384% PER MONTH (160.489808068608% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 160.489808068608% PER MONTH (192.5877696823296% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 192.5877696823296% PER MONTH (231.10532361879552% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 231.10532361879552% PER MONTH (277.326388342554624% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 277.326388342554624% PER MONTH (332.7916660110655488% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 332.7916660110655488% PER MONTH (400.35000001327865856% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 400.35000001327865856% PER MONTH (480.42000001600000000% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 480.42000001600000000% PER MONTH (576.50400001920000000% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 576.50400001920000000% PER MONTH (691.80480002304000000% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 691.80480002304000000% PER MONTH (830.16576002764800000% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 830.16576002764800000% PER MONTH (996.19891203317760000% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 996.19891203317760000% PER MONTH (1195.43869443981312000% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 1195.43869443981312000% PER MONTH (1434.52643332777574400% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 1434.52643332777574400% PER MONTH (1721.43172000000000000% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 1721.43172000000000000% PER MONTH (2065.71806400000000000% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 2065.71806400000000000% PER MONTH (2478.86167680000000000% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 2478.86167680000000000% PER MONTH (2974.63401216000000000% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 2974.63401216000000000% PER MONTH (3569.56081459200000000% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 3569.56081459200000000% PER MONTH (4283.47297751040000000% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 4283.47297751040000000% PER MONTH (5139.96757301248000000% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 5139.96757301248000000% PER MONTH (6167.96108761497600000% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 6167.96108761497600000% PER MONTH (7381.55330513797120000% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 7381.55330513797120000% PER MONTH (8817.86396616556352000% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 8817.86396616556352000% PER MONTH (10581.43675939867622400% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 10581.43675939867622400% PER MONTH (12697.72411127841146880% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 12697.72411127841146880% PER MONTH (15277.46893353409376320% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 15277.46893353409376320% PER MONTH (18332.9627202409125164800% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 18332.9627202409125164800% PER MONTH (21999.5552642890950197760% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 21999.5552642890950197760% PER MONTH (26399.4663171469140237760% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 26399.4663171469140237760% PER MONTH (31679.3595805762968285440% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 31679.3595805762968285440% PER MONTH (38015.231496691556194252800% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 38015.231496691556194252800% PER MONTH (45618.277796029867433103360% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 45618.277796029867433103360% PER MONTH (54741.93335523584092052403200% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 54741.93335523584092052403200% PER MONTH (65690.32002628300910462883840% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 65690.32002628300910462883840% PER MONTH (78828.3840315396109255546060800% ANNUAL PERCENTAGE RATE);
 IF THE ABOVE CREDIT IS NOT PAID BY THE 25TH OF EACH MONTH, THE
 FINANCE CHARGE WILL BE 78828.384031539610925554

100

612500

NORTH SALT LAKE CITY, UTAH

COMMERCIAL INVOICEDate: 9 AUGUST 1982 Invoice No.: _____

SOLD TO: C.M.C. CORP
 3468 MT. DIABLO BLVD.
 CAYFAYETTE, CALIF. 94549

Our Order No. _____

Cust. Order No. _____

SHIP TO: A.H.W. CORP.
 CONAKRY,
 REPUBLIC OF GUINEA,
 AFRICA

Shipped via XX CIRCLE AIRFREIGHT CORP.Sailed from SALT LAKE CITY, UTAH U.S.A.Date Sailed 09 AUGUST 1982

| ITEM NO. | DESCRIPTION | QUANTITY SHIPPED | UNIT PRICE | TOTAL PRICE |
|------------------------|--|------------------|------------|-------------|
| 1 | NUTS AND BOLTS MISC. PARTS | | | 1907.98 |
| 2 | G-744 PTC ASSY | | | 285.00 |
| 3 | PT.O GASKETS. | | | 3.00 |
| 4 | BELL HOUSING ASSY 350 CUMMINS | | | 210.00 |
| 5 | SQHD DIFFERENTIAL 529 RATIO FRONT ASSY | | | 1875.00 |
| 6 | SQHD DIFF REAR 529 RATIO | | | 1155.00 |
| 7 | SQHD FRONT CORE | | | 500.00 |
| 8 | SQHD REAR CORE | | | 200.00 |
| NET TOTAL | | | | 6,135.98 |
| FREIGHT CHARGES | | | | 5,227.04 |
| PICK UP CHARGES | | | | 71.80 |
| HANDLING AND DOCUMENTS | | | | 49.90 |
| TOTAL C&F | | | | \$11,484.72 |

THIS INVOICE CERTIFIED TO BE TRUE AND CORRECT AND
 THESE GOODS TO BE OF U.S. ORIGIN BY: [Signature]

DIVERSION CONTRARY TO U. S. LAW IS PROHIBITED.

THESE COMMODITIES LICENSED BY THE UNITED STATES
 FOR ULTIMATE DESTINATION Guinea
 DIVERSION CONTRARY TO U. S. LAW IS PROHIBITED.

CINCINNATI
CLEVELAND

HARTFORD
HOUSTON

MIAMI
MILWAUKEE

NEW YORK
NEWARK
PHILADELPHIA

RACINE
ST. LOUIS
SALT LAKE CITY

TULSA
WICHITA

CONSIGNEE TO N^o FAMILY SKLIA

Also Notify

Street Address

BP 63

HOLD AT TERM.

City & Country

CONAKRY, GUINEA AFRICA

| Marks & Numbers | No. of Plugs | Quantity and Nature of Goods | Dimensions of Volume | Gross Weight | SHIPPER'S DECLARED VALUE | |
|-----------------|-----------------|------------------------------|-------------------------|--------------|--------------------------|--------------|
| | | | | | For Customs Only | For Carriage |
| 1 | 1 | Box TRUCK PARTS. | | | | |
| | | Country of Origin | | | | |



SPECIAL INSTRUCTIONS:

SURANCE: \$ _____ (No Insurance Unless Declared) CHARGES: PREPAID ☒ COLLECT ☐ COD Amt. \$ _____

DOCUMENTS TO ACCOMPANY AIR WAYBILL: COMMERCIAL INVOICE: ☐ CONSULAR INVOICE: ☐ CERTIFICATE OF ORIGIN: ☐

OTHER _____

SHIPPER Upal B... ADDRESS ...

Signature Buyer Date 8/30/82 X ... 8/30/82

DATE 12003 (8/79) (Received by Dayman)

CONDITIONS OF CONTRACT

(1) As used in this contract, "air waybill" is equivalent to "air consignment note", "shipper" is equivalent to "consignor", "carriage" is equivalent to "transportation" and "Carrier" includes the carrier or forwarder issuing this air waybill and all carriers that carry the goods hereunder or perform any other services related to such carriage. For the purposes of the exemption from and limitation of liability provisions set forth or referred to herein, "Carrier" includes agents, servants, or representatives of any such carrier. Carriage to be performed hereunder by several successive carriers is regarded as a single operation.

(2) (a) Carriage hereunder is subject to the rules relating to liability established by the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw, October 12, 1929 (hereinafter called "the Convention"), unless such carriage is not "international carriage" as defined by the Convention. (See Carrier's tariffs for such definition.)

(b) To the extent not in conflict with the foregoing, carriage hereunder and other services performed by each Carrier are subject to (i) applicable laws (including national laws implementing the Convention), government regulations, orders and requirements, (ii) provisions herein set forth, and (iii) applicable tariffs, rules and regulations of such Carrier, which are made part hereof and which may be inspected at any of its offices.

(c) For the purposes of the Convention, the agreed stopping places (which may be altered by Carrier in case of necessity) are those places, except the place of departure and the place of destination, set forth on the face hereof.

(d) In the case of carriage subject to the Convention, the shipper acknowledges that he has been given an opportunity to make a special declaration of the value of the goods at delivery and that the sum entered on the face of the air waybill as "Shipper's/Consignor's Declared Value-For Carriage," if in excess of U.S. \$20.00 per kilo constitutes such special declaration of value.

(3) Insofar as any provision contained or referred to in this air waybill may be contrary to, mandatory law, government regulations, orders, or requirements, such provision shall remain applicable to the extent that it is not overridden thereby. The invalidity of any provision shall not affect any other part hereof.

4) Except as the Convention or other applicable law may otherwise require: (a) Carrier is not liable to the shipper or to any other person for any damage, delay or loss of whatsoever nature (hereinafter collectively referred to as "damage") arising out of or in connection with the carriage of the goods, unless such damage is proved to have been caused by the negligence or wilful fault of Carrier and there has been no contributory negligence of the shipper, consignee or other claimant. (b) Carrier is not liable for any damage directly or indirectly arising out of compliance with laws, government regulations, orders or requirements or from any cause beyond Carrier's control, (c) the charges for carriage having been based upon the value declared by shipper, it is agreed that any liability shall in no event exceed the shipper's declared value for carriage stated on the face hereof, and in the absence of such declaration by shipper liability of carrier shall not exceed U.S. \$20.00 per kilo of goods destroyed, lost, damaged or delayed. All claims shall be subject to proof of value. (d) a carrier issuing an air waybill for carriage exclusively over the lines of others does so only as a sales agent.

5) It is agreed that no time is fixed for the completion of carriage hereunder and that Carrier may without notice substitute alternate carriers or aircraft. Carrier assumes no obligation to carry the goods by any specified aircraft or over any particular route or route or to make connection at any point according to any particular schedule. Carrier hereby authorizes to select or deviate from the route or schedule of the agent, notwithstanding that the same may be stated on the face hereof. The shipper guarantees payment of charges if not prepaid.

6) The goods shall be delivered to the consignee at the place of destination or at the place of departure to the airport at the place of destination. If so specifically agreed, the goods or packages said to contain the goods, described on the face hereof, are also accepted for forwarding to the airport of departure and for reforwarding beyond the airport of destination. If such forwarding or reforwarding is by carriage operated by Carrier, such carriage shall be upon the same terms as to liability as set forth in Paragraphs 2 and 4 hereof. In any other event, the issuing carrier and last carrier, respectively, in forwarding or reforwarding the goods, shall do so only as agents of the shipper, owner or consignee, as the case may be, and shall not be liable for any damage arising out of such additional carriage, unless proved to have been caused by its own negligence or wilful fault. The shipper, owner, and consignee hereby authorize such carriers to do all things deemed advisable to effect such forwarding or reforwarding, including, but not without limitation, selection of the means of forwarding or reforwarding and the routes thereof (unless these have been herein specified by the shipper), execution and acceptance of documents of carriage (which may include provisions exempting or limiting liability) and consigning of goods with no declaration of value, not withstanding any declaration of value in this air waybill.

(7) Carrier is authorized (but shall be under no obligation) to advance any duties, taxes or charges and to make any disbursements with respect to the goods, and the shipper, owner and consignee shall be jointly and severally liable for the reimbursement thereof. No Carrier shall be under obligation to incur any expense or to make any advance in connection with the forwarding or reforwarding of the goods except against repayment by the shipper. If it is necessary to make customs entry of the goods at any place, the goods shall be deemed to be consigned at such place to the person named on the face hereof as customs consignee or, if no such person be named, to the carrier carrying the goods to such place or to such customs consignee, if any, as such carrier may designate.

(8) At the request of the shipper, and if the appropriate premium is paid and the fact recorded on the face hereof, the goods covered by this air waybill are insured on behalf of the shipper under an open policy for the amount requested by the shipper as set out on the face hereof subject to the terms and conditions of such open policy which is available for inspection by the shipper. Claims under such policy must be reported immediately to an office of Carrier.

(9) Except as otherwise specifically provided in this contract, delivery of the goods will be made only to the consignee named on the face hereof, unless such consignee is one of the Carriers participating in the carriage, in which event delivery shall be made to the person indicated on the face hereof as the person to be notified. Notice of arrival of the goods will, in the absence of other instructions, be sent to the Consignee, or the person to be notified, by ordinary methods, Carrier is not liable for non-receipt or delay in receipt or such notice.

(10) (a) No action shall be maintained in the case of damage to goods unless a written notice, sufficiently describing the goods concerned, the approximate date of the damage, and the details of the claim, is presented to issuing Carrier within 7 days from the date of receipt thereof, and in the case of loss (including non-delivery) unless presented within 120 days from the date of issue of the air waybill.

(b) Any rights to damages against Carrier shall be extinguished unless an action is brought within two years after the occurrence of the events giving rise to the claim.

(11) The shipper shall comply with all applicable laws, customs and other government regulations of any country to, from, through or over which the goods may be carried, including those relating to the packing, carriage or delivery of the goods, and shall furnish such information and attach such documents to this air waybill as may be necessary to comply with such laws and regulations. Carrier shall not be liable to the shipper or any other person for any expense incurred by the shipper in complying with the above.